## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MATTHEW BARON HILL Claimant	
VS.	) Docket No. 193,104
CITY OF MULVANE Respondent	)
AND	
EMPLOYERS MUTUAL CASUALTY CO. Insurance Carrier	

## ORDER

This Application for Review of a Preliminary Hearing Order entered by Administrative Law Judge Shannon S. Krysl on February 23, 1995, comes on before the Appeals Board at the request of the respondent.

## ISSUES

The Administrative Law Judge found that the claimant had suffered a work-related right knee injury and ordered temporary total disability compensation, medical expenses paid and Dr. Stanley Jones authorized for a functional capacity evaluation, rating and restrictions. From that Order, the respondent requests review raising the single issue of whether the claimant's accidental injury arose out of and in the course of his employment with the respondent on the date alleged.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The issue raised by the respondent in this appeal is one subject to review by the Appeals Board from a preliminary hearing order in accordance with the provisions of K.S.A. 44-534a(a)(2).

Claimant alleged that he injured his right knee on August 20, 1994, while responding to a fellow officer's request for assistance. Claimant was patrolling the downtown area for "Old Settler's Day" celebration with Officer Paul Jones when they received a call from another officer who requested assistance at approximately 9:00 p.m. The location of the

officer requesting assistance was about a block and one-half from the claimant. The claimant and Officer Jones started walking to the other officer's location in a hurried manner. Claimant was about one-half block from the other officer's location when his right knee popped and he experienced pain. Claimant immediately advised Officer Jones of his problem, stopped, stretched his knee and was able to continue to the other officer's location walking with a limp. Officer Jones testified at the preliminary hearing and corroborated claimant's testimony. After the knee popped, Officer Jones observed that the claimant was limping and he had not limped prior to the incident.

Previous to the August 20, 1994 incident, claimant had a total of five surgeries on his right knee. The first surgery occurred in 1985 as a result of a football injury and the last surgery was performed on May 26, 1994, by Duane A. Murphy, M.D., an orthopedic surgeon, Wichita, Kansas. At that time, a meniscal cyst was excised from the lateral meniscus. Claimant returned to his full duties as a police officer on June 15, 1994.

On August 23, 1994, claimant first sought medical treatment for the subject injury from Dr. Murphy for his right knee injury. Dr. Murphy diagnosed a recurrent lateral synovial cyst with lateral meniscal tear. He prescribed anti-inflammatories and released claimant for desk duty only. In a letter dated November 18, 1994, Dr. Murphy opined that claimant's right knee condition that occurred on October 20, 1994, (sic) was related to his work.

Respondent sent the claimant for treatment to J. Stanley Jones, M.D., an orthopedic surgeon in Wichita, Kansas, on October 26, 1994. Dr. Jones confirmed Dr. Murphy's diagnosis and performed an excision of a meniscal cyst with a Marlex graft on December 13, 1994.

Respondent contends that claimant did not suffer a work-related injury to his right knee, as the injury was caused only by normal activities of day-to-day living and was not a result of a special risk associated with his employment. Additionally, respondent argues that six (6) days prior to the alleged accidental injury, claimant complained that he hurt his knee playing softball.

After a review of the preliminary hearing record, the Appeals Board finds that it is more probable true than not that claimant aggravated or accelerated his preexisting right knee condition while performing his normal work activities on August 20, 1994. A claim is compensable if a worker's preexisting condition is aggravated, accelerated or intensified by a subsequent industrial injury that results in disability. See <a href="Harris v. Cessna Aircraft Co.">Harris v. Cessna Aircraft Co.</a>, 9 Kan. App. 2d 334, 678 P.2d 178 (1984). Any lesion in the physical structure of a worker causing harm may be a personal injury if it occurs under the stress of usual labor. See <a href="Demars v. Rickel Manufacturing Corporation">Demars v. Rickel Manufacturing Corporation</a>, 223 Kan. 374, 573 P.2d 1036 (1978). In the instant case, claimant's hurried walking aggravated a preexisting meniscal cyst and further caused a tear in the right lateral meniscus. Accordingly, the Preliminary Hearing Order entered by the Administrative Law Judge that granted medical and temporary total benefits is affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the February 23, 1995, Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this day of May, 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: John L. Carmichael, Wichita, Kansas Kendall R. Cunningham, Wichita, Kansas Shannon S. Krysl, Administrative Law Judge George Gomez, Director